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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

PATRICIA DESANTIS, individually and as
Successor in Interest for RICHARD DESANTIS,
deceased, and as Guardian Ad Litem for DANI
DESANTIS, a minor, and TIMOTHY
FARRELL, a minor,

Plaintiffs,

vs.

CITY OF SANTA ROSA, JERRY SOARES,
RICH CELLI, TRAVIS MENKE, PATRICIA
MANN and DOES 1 through 25, inclusive,

Defendants.

ADRIANNE DESANTIS,
Plaintiffs,

vs.

CITY OF SANTA ROSA, a municipal
corporation; EDWIN FLINT, in his capacity as
Chief of Police for the CITY OF SANTA
ROSA; PATRICIA MANN, individually, and in
her capacity as an officer for the CITY OF
SANTA ROSA; RICH CELLI, individually and
in his capacity as an officer for the CITY OF
SANTA ROSA; TRAVIS MENKE, individually
and in his capacity as an officer; and DOES 1-
25, inclusive, individually and in their capacities
as officers for the CITY OF SANTA ROSA,

Defendants.

Case No. C 07 3386 JSW (consolidated with
Case No. C 07 04474)

**PLAINTIFF ADRIANNE DESANTIS'
OPPOSITION TO DEFENDANTS'
OBJECTION AND MOTION TO STRIKE
OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

1 Plaintiff ADRIANNE DESANTIS hereby opposes Defendants' Objection and Motion to
 2 Strike her Opposition to Defendants' Motion for Summary Judgment, as follows:

3
 4 **1. PLAINTIFF'S OPPOSITION WAS TIMELY FILED UNDER LOCAL RULE 7-3**

5 Defendants assert in their Objection, without factual basis, "plaintiff's opposition was not
 6 timely filed and defendants did not have an opportunity to review said opposition before filing their
 7 reply." (Defendants Objection, page 1, lines 25-26). Plaintiffs Opposition was filed electronically
 8 (through the Court's ECF service) on September 26, 2008.

9
 10 October 17, 2008 is the date set to hear the Motion for Summary Judgment against Plaintiff
 11 Adrienne DeSantis. Northern District Local Rule 7-3 governs the filing of Oppositions, Reply, and
 12 Supplemental Material. Local Rule 7-3(a), Opposition, states: "Any opposition to a motion must be
 13 served and filed not less than 21 days before the hearing date." September 26, 2008 is exactly 21 days
 14 before the hearing date of October 17, 2008.

15
 16 On its face, Defendants' objection is frivolous under Federal Rule of Civil Procedure 11(b),
 17 which requires that pleadings, written motions, or other papers filed with the Court by an attorney are
 18 warranted by existing law and nonfrivolous argument. Defendants assert no basis to hold Plaintiff
 19 Adrienne DeSantis to a different timeline other than that imposed by Local Rule 7-3.

20
 21 There is also no prejudice suffered by Defendants, who continue to have the opportunity to
 22 respond to Plaintiff Adrienne DeSantis Opposition appropriately by Reply brief.

23
 24 **2. PLAINTIFF ADRIANNE DESANTIS WAS NOT A PARTY TO THE COURT'S**
 25 **AUGUST 20, 2008 ORDER SETTING THE BRIEFING SCHEDULE ON**
 26 **PLAINTIFF PATRICIA DESANTIS' MOTION FOR SUMMARY JUDGMENT**
 27 **AND DEFENDANTS' CROSS-MOTION AND OPPOSITION TO PATRICIA**
 28 **DESANTIS' MOTION FOR SUMMARY JUDGMENT.**

Although unstated in their objection, it may be Defendants' position that Plaintiff
 ADRIANNE DESANTIS is bound to the modifications in the Order to Amend the briefing schedule

1 on Plaintiff PATRICIA DESANTIS' Motion for summary judgment. If that is Defendants' position,
2 as it appears to be from their reply as to the motions filed in the *Patricia DeSantis* matter, it is
3 logically unsound and factually unsupported.

4 First, Plaintiff ADRIANNE DESANTIS was not a party to, and did not join Plaintiff
5 PATRICIA DESANTIS' Motion for Summary Judgment. The stipulation to amend the briefing
6 schedule was entered into only between the Defendants and the Plaintiffs in *Patricia DeSantis, et al.*
7 Case no. C 07 3386 JSW (Document No. 50). Plaintiff ADRIANNE DESANTIS made no agreement
8 to alter or amend the normal course of briefing established by Local Rule 7-3. The Court's Order on
9 that stipulation refers only to Defendants' cross-motion and opposition to Plaintiffs' Motion for
10 Summary Judgment in one brief (which was not filed on behalf of Adrienne DeSantis), Plaintiffs'
11 Opposition to Defendants' Motion and reply in support of their motion (also in one brief). The
12 Court's Order does not reflect any alteration to the briefing schedule as to Plaintiff *Adrienne*
13 *DeSantis*.

14 Additionally, Defendants did not argue in their Cross-Motion for Summary Judgment the
15 cause of action that pertains to Plaintiff Adrienne DeSantis, which consists of a violation of Adrienne
16 DeSantis' Fourteenth Amendment right to familial relationship with her son, Decedent Richard
17 DeSantis. Defendants argued that there is no municipal liability, no Fourth Amendment violation,
18 and qualified immunity. Plaintiff Adrienne DeSantis has never asserted a Fourth Amendment
19 violation in this case. Her cause of action under the Fourteenth Amendment is distinct from the
20 Fourth Amendment violation asserted by Plaintiff Patricia DeSantis.

21 Plaintiff Adrienne DeSantis has properly defended any Motion for Summary Judgment filed
22 against her, even though it is arguable that a Motion for Summary Judgment was ever properly made
23 against Adrienne DeSantis.

24 Defendants' objection should be overruled.

25 **Respectfully submitted,**

26 Dated: October 1, 2008

The Law Offices of John L. Burris

27 

28 Ben Nisenbaum
Attorney for Plaintiffs